

RESPONSE TO OFFICE ACTION
SERIAL NO.: 09/896,548
APPLICANT: van den NIEUWELAAR

REMARKS

On pages 2 - 4 of the Office Action, the Examiner rejected claims 1, 5, 6, and 10-12 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,467,990 to Montanari et al. This rejection is respectfully traversed and reconsideration and withdrawal thereof are requested.

Montanari et al. discloses the need for "tracking the production history of an individual product." *See* col. 1, ll. 18-19. According to Montanari et al., there is a need to prove that food is produced according to certain regulations, a desire among consumers to know the origin of a consumed product and how it is produced, and a desire among consumers to consume meat that contains no undesired substances. *See* col. 2, ll. 44-55; col. 1, ll. 48 - col. 2, ll. 8. Finally, the aspect of niche markets such as the 'organic market' is mentioned, as well as the desire of some producers to focus on those niche markets, and the consequent need to be able to prove that their meat is produced according to requirements of that market, i.e. organically, are discussed. *See* col. 2, ll. 56 - col. 3, ll. 5.

According to Montanari et al., the invention relates to a method for tracking the history of food products. Abstract; col. 1, ll. 6-11; col. 3, ll. 6-14; col. 7, ll. 39-43. In this manner, the source and quality of the product can be determined and verified, and possible problems in the end product can be traced back to the source of the product. Col. 3, ll. 12-16; col. 7, ll. 39-47. Montenari et al. generally discloses generating a tracking number (col. 3, ll. 36), which identifies a particular food product at a certain stage in the production process.

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The tracking number is displayed on a label which is affixed to the product. When the product is divided in several portions, a respective tracking number is attached to each portion, in order to enable the tracking of the portion back to the product. Col. 3, ll. 44-46. Montanari et al. further relates to a method for tracking the production history of a food product, including affixing a label to a food product, wherein the label has an identifying code for identifying the product, the recording of additional data during the processing of the food product and the storage of the additional data on the label. *See* col. 4, ll. 11-17. Montanari et al. discloses a method for tracking food products to enable verification of product origination and to trace the source of pathogens. The disclosed method includes generation of a Tracking Number (TN) to identify a food product. Labels and tags may be used to identify certain parts or portions at various stages of the process.

The Examiner stated that Montanari et al. discloses all of the limitations of independent method claim 1, and that independent device claim 6 includes the same functional limitations as claim 1. The Examiner cited col. 8, ll. 20-34 and ll. 35-45, as well as col. 11, ll. 17-44 and col. 13, ll. 49-67. Contrary to the Examiner's assertions, Montanari et al. does not disclose the elements of the claimed method or device. As discussed, Montanari et al. discloses a way to track the actual food product, e.g. animal. Conversely, the claimed invention relates to recording and utilizing processing data, product data, relationship data and demand data in order to control the processing of a slaughter product.

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The Examiner disagreed with “the narrow interpretation that Montanari is only used for tracking,” but has failed to adequately identify any teaching or suggestion in Montanari et al. that discloses anything other than tracking. *See* Office Action, page 9. The Examiner asserted that Montanari et al. “anticipates the broadest reasonable interpretation of the claim requirements.” The Examiner characterized the claims as requiring “a meat production process where, given a correlation of demand data to a product property, the process is controlled by modifying a process parameter that corresponds to that property.” Office Action, page 9. First, the Examiner characterized “a demand for natural, organic and contamination free meat” as the demand data. Office Action, page 9. The Examiner specifically stated that an example of parameter data disclosed in Montanari et al. includes the “deleterious effects on the meat derived from such elements”, disclosed in Montanari et al. (col. 11, ll. 25). The Examiner asserted that this data can be collected and recorded at any stage of the process in the form of pathogen testing, citing col. 12, ll. 30-40 of Montanari et al. Office Action, page 9. According to the Examiner, the processing data “is determining ‘whether the animal ingested material treated with undesired chemicals such as pesticides or herbicides, or [whether] various other environmental conditions may have had any deleterious effects. . . ’ (column 11, line 22).” Office Action, page 10. The Examiner asserted that “the process control aspect is present when, ‘this information allows grazing practices and performances to be monitored and properly administered’ (column 11, line 31).” Office Action, page 10. The Examiner concluded that Montanari et al. reads on claims

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1 and 6 because “an integral part of the meat production process (column 8, lines 20-34) utilizes correlated information to alter or improve the overall process (column 7, line 62 - column 8, line 19). Office Action, page 10. The attorney for applicant’s assignee respectfully suggests that Examiner is attempting to hide behind this “broad” explanation while continuing to fail to point to a teaching or suggestion for each limitation in the claim, as further described below.

Claim 1 requires “providing at least one processing station for performing at least one processing on the slaughter product, wherein at least one parameter of the processing is adjustable.” The Examiner cited column 8, lines 20-34 of Montanari et al. as disclosing this limitation. However, the cited paragraph does not disclose an adjustable production parameter. Rather, the general organization of the meat producing industry is described.

Claim 1 also requires “recording relationship data relating to at least one relationship between parameter data relating to the at least one parameter of the processing and property data; recording demand data relating to the at least one desired property of the slaughter product.” The Examiner stated that relationship and demand data are discussed at column 11, lines 17-44. Column 11 of Montanari et al. disclose recording the feed and feeding locations of animals into a database in order to later determine whether and when an animal ingested certain materials. This is done by keeping track of the location of the animals using the animal’s TN. The ability to track grazing practices and performances by keeping a record of location transfers using TN’s is also disclosed. Column 11, lines 35-44 disclose a way to

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verify that a particular animal is entitled to a specific designation, such as “natural” or “organic.” This is accomplished by recording information relating to the “organic” certification of the pastures and noting it relating to the TN’s of the animals in those pastures. While column 11 discloses the ingestion of certain substances by the animal and the possibility of determining (in retrospect) a connection between the ingestion of these substances and deleterious effects on the quality of the meat, neither the storage of or the use of a relationship in processing is disclosed.

Tracking the location of an animal using a TN and recording that information is not recording relationship data related to at least one relationship between parameter of processing data and property data, as required by the claims. The Examiner stated that “features upon which applicant relies (i.e. specific examples of the type of processing and property data to be correlated) are not recited in the rejected claim(s).” Office Action, page 9. However, the Examiner has failed to cite any “relationship data” disclosed in Montanari et al. Examples of parameters and properties were given in an attempt to clearly point out that the Examiner failed to cite any teaching or suggestion in Montanari et al. of “recording relationship data.” “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Thus, absent some disclosure in Montanari et al. of this feature of the claims, Montanari et al. cannot anticipate the claims.

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Claim 1 also requires “controlling the processing of the slaughter product by adjusting the at least one parameter of the processing on the basis of at least part of the property data, the relationship data, and the demand data.” The Examiner cited column 13, lines 49-67 of Montanari et al. as disclosing this limitation. However, column 13 discloses how to determine the number of sub-sections into which a particular quarter of an animal will be divided using information on the Q-PIN label. At best, Montanari et al. discloses only property data on the Q-PIN label. Montanari et al. does not disclose any other data that is stored or present in any other way. Montanari et al. teaches only that property data may be used and does not disclose the use of any other kind of data. Montanari et al. provides no teaching or suggestion of the use of relationship data or demand data and therefore cannot anticipate the claims. *See Verdegaal Bros.*

For example, in column 14, lines 34-42, Montanari et al. discloses that certain parameters of the production process can be adjusted on the basis of the weight of a product before and after cooling, i.e. the shrink of a product. Shrink is a property parameter and hence, the adjustment of production parameters on the basis of the amount of shrink is controlling the production process on the basis of property data. Montanari et al. does not disclose use of relationship data. In order to achieve the goal described in Montanari et al., property data of the product must be stored, but not relationship data or demand data. Controlling the processing of the slaughter product by adjusting the at least one parameter of

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the processing on the basis of at least part of the property data, the relationship data, and the demand data, as required by the claims, is not disclosed in Montanari et al.

The claims of this invention mention various types of data. Property data is data relating to the product, for example, the weight of a product. Relationship data indicates a specific relationship between a processing operation and the results of that processing operation for the “property data,” i.e. the effects of a particular processing operation on certain properties of the product. Parameter data relates to production parameters, while demand data relates to the demand of consumers for products with certain characteristics. As explained in the prior response, examples of parameters of processing may include duration of processing, temperature, force, frequency, pressure, electric voltage and electric current or power. See e.g. specification, page 2. Claim 1 of the application requires controlling at least one parameter of the production process using the property data, the relationship data and the demand data. Thus, in the claimed invention, the relationship between parameters of processing and properties of a product provides a correlation between parameters and properties, so that processing may be controlled by adjusting a processing parameter on the basis of information relating to at least in part on the property data, the relationship data and demand data.

This explanation of the terms is offered because in the rejection of the claims, the Examiner has failed to properly distinguish property data, parameter data and relationship data. Citing column 11, lines 17-33 , the Examiner stated that an example of parameter data

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disclosed in Montanari et al. includes the “deleterious effects on the meat derived from such elements”. The deleterious effect on the meat from contamination is not a “parameter” of processing. In any event, there is no teaching or suggestion in Montanari that the ingestion of substances by the animal and the effects on the meat of the animal is used in any way in the processing of the animal.

Further, on page 10 of the Office Action, the Examiner categorizes as processing data the determination whether the animal has been treated with undesired chemicals. This is in fact parameter data. Even assuming this is parameter data, Montanari et al. does not disclose the use of this information to control the processing of the animal. Rather, Montanari et al. states only that the goal of the invention is that this information is used in order to enable verification of the origin of the product (see col. 3, ll. 14-15), i.e. tracking.

Therefore, Montanari fails to disclose several of the limitations of the independent claims and cannot anticipate the claims. For at least the reasons explained, Montanari et al. does not disclose every limitation of independent claims 1 and 6. The assignee has responded only to the rejections of the independent claims, since the dependent claims are patentable for at least the reasons the independent claims are patentable. The dependent claims may be patentable for additional reasons. Therefore, for at least these reasons all of the grounds of rejection should be withdrawn.

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CONCLUSION

The foregoing is submitted as a full and complete response to the Office Action mailed November 17, 2003. Assignee submits that the claims are allowable for at least the reasons set forth above, and allowance of the claims is respectfully requested.

Please charge any additional fees or credit any overpayment to Deposit Order Account No. 11-0855.

Respectfully submitted,

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